

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA**

JEROME CURTIS, )  
                        )  
Plaintiff,         )  
                        )  
v.                   ) Cause No.: 1:23-CV-0079-HAB-SLC  
                        )  
STATE OF ILLINOIS, )  
                        )  
Defendant.         )

**OPINION AND ORDER ADOPTING THE MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION**

This matter is before the Court for an Order on the Magistrate Judge's Report and Recommendation ("R & R") wherein the Magistrate Judge *sua sponte* recommends the case be DISMISSED without prejudice for lack of subject matter jurisdiction. (ECF No. 5). The parties had fourteen days after being served with a copy of the R & R to file written objections thereto with the Clerk of Court. No objections to the R&R have been filed.

Plaintiff, proceeding *pro se*, filed suit against the State of Illinois pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201 and Indiana Code 34-14-1-2. The Complaint did not properly allege jurisdiction and the Magistrate Judge *sua sponte* determined that subject matter jurisdiction did not exist. The undersigned has reviewed the Magistrate Judge's R & R. The Magistrate Judge found plaintiff's claims against Illinois are barred by the Eleventh Amendment, which precludes subject matter jurisdiction in this Court. Alternatively, the Magistrate Judge concluded that the Plaintiff did not plead an independent source of federal question jurisdiction to support federal question jurisdiction under the Declaratory Judgments Act. Nor could he establish diversity jurisdiction since a state defendant is not a citizen of any state. *Indiana Port Com'n v. Bethlehem Steel Corp.*, 702 F.2d 107, 109 (7th Cir. 1983) ("It is well-settled that a state is not a

citizen for diversity purposes.”) (citations and quotations omitted). Accordingly, the determination by the Magistrate Judge that this court lacks subject matter jurisdiction is well-taken. The R & R is APPROVED AND ADOPTED. (ECF No. 5). This case is DISMISSED without prejudice for lack of jurisdiction.<sup>1</sup>

SO ORDERED on June 28, 2023.

s/ Holly A. Brady  
JUDGE HOLLY A. BRADY  
UNITED STATES DISTRICT COURT

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<sup>1</sup> “[A] court that lacks subject matter jurisdiction cannot dismiss a case with prejudice.” *McHugh v. Ill. Dep’t of Transp.*, 55 F.4th 529, 533 (7th Cir. 2022).